

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs January 30, 2008

BARRY W. RITCHIE v. HOWARD CARLTON, WARDEN

Appeal from the Criminal Court for Johnson County
No. 5093 Lynn W. Brown, Judge

No. E2007-01606-CCA-R3-HC - Filed May 14, 2008

The petitioner appeals the Johnson County Criminal Court's summary dismissal of his petition for writ of habeas corpus, alleging that the court abused its discretion in dismissing his petition. The petitioner specifically alleges that his judgments are void because the judge did not sign them and that the language of the aggravated rape statute used to convict him was unconstitutionally vague. Because neither of the petitioner's arguments would render his convictions void, we affirm the dismissal of the writ of habeas corpus.

Tenn. R. App. P. 3; Judgment of the Criminal Court Affirmed

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which NORMA MCGEE OGLE, and D. KELLY THOMAS, JR., JJ., joined.

Barry W. Ritchie, Mountain City, Tennessee, Pro Se.

Robert E. Cooper, Jr., Attorney General and Reporter; and David H. Findley, Assistant Attorney General, for the appellee, State of Tennessee.

OPINION

In October 1981, the petitioner was convicted of aggravated rape and armed robbery, and the trial court imposed a life sentence. The following procedural history comes from this court's opinion on the appeal of the denial of his prior habeas petition:

Following his convictions, and those of his co-defendant, James William Massengale, for aggravated rape and armed robbery, the trial court sentenced each man to an effective sentence of life imprisonment. This Court affirmed the convictions on appeal. *State v. James William Massengale and Barry Winfred Ritchie*, No. 780, Hamilton County (Tenn. Crim. App. Mar. 1, 1983), *perm. to appeal denied* (Tenn. June 27, 1983). Petitioner and Mr. Massengale

then filed separate petitions for post-conviction relief which were denied, and the judgments of the trial courts were upheld on appeal. *State v. James William Massengale*, No. 922, Hamilton County (Tenn. Crim. App. Oct. 6, 1987), *perm. to appeal denied* (Tenn. Dec. 12, 1988); *Barry Winfred Ritchie v. State*, No. 946, Hamilton County (Tenn. Crim. App. July 23, 1986), *perm. to appeal denied* (Tenn. 1986). Neither Petitioner nor Mr. Massengale questioned the jurisdiction of the Hamilton County Criminal Court to try and convict them either on appeal or in their respective petitions for post-conviction relief.

In 1991, Mr. Massengale filed a petition for writ of habeas corpus alleging that the offenses leading to his convictions occurred on property owned by the Tennessee Valley Authority thereby giving exclusive jurisdiction over the crimes to the federal courts. This Court affirmed the trial court's denial of Mr. Massengale's petition because he failed to provide any proof "that Congress intended for the United States Courts to have exclusive jurisdiction over matters arising on Tennessee Valley Authority property." *Massengale v. Mills*, 826 S.W.2d 122, 123 (Tenn. Crim. App. 1991).

A few years later, Petitioner also filed a petition for writ of habeas corpus alleging the same jurisdictional problem with his convictions, that is, the crimes occurred on property under the exclusive jurisdiction of the federal government. Neither Petitioner nor his co-defendant denied that the offenses took place in their respective habeas corpus petitions. However, unlike Mr. Massengale, Petitioner submitted the following documents with his petition: "(1) a map placing the offenses on a tract of land designated as CR 1418; (2) a set of deeds conveying the tract to the United States, specifically the Tennessee Valley Authority (TVA), in fee simple on May 2, 1938, and (3) an easement assigning all 'rights, privileges and powers' over the tract from Hamilton County, Tennessee, to the City of Chattanooga on March 5, 1992." *Ritchie v. State*, No. 03C01-9601-CC-00029, (Tenn. Crim. App. June 21, 1999), *rev'd.*, 20 S.W.3d 624 (Tenn. 2000). On appeal following the trial court's dismissal of Petitioner's petition for writ of habeas corpus, this Court concluded that "a claim of lack of subject matter jurisdiction is cognizable in a habeas corpus proceeding." *Ritchie*, No. 03C01-9601-CC-00029 at 2. We noted that a challenge to a trial court's territorial jurisdiction over the crimes, if successful, would render Petitioner's conviction void in that court. *Ritchie*, No. 03C01-9601-CC-00029 at 3. At Petitioner's

original trial, three witnesses testified that the crimes were committed on an “area along the bank of the Tennessee River south of the Chickamauga Dam, on the same side of the river as the Amnicola Highway, and immediately behind Chattanooga State University.” *Id.* We noted that “in general, the courts of the State of Tennessee lack subject matter jurisdiction over matters occurring on federal lands purchased before 1940 without express provisions to the contrary contained in the property agreement.” Because the evidence in the record raised sufficient questions concerning the convicting court’s jurisdiction, we reversed the trial court’s judgment dismissing Petitioner’s petition for writ of habeas corpus and remanded the matter for an evidentiary hearing despite the fact that the judgments of conviction were not facially void.

We also ordered the trial court to make findings of fact relative to the exact location of the offenses, the status of ownership at the time of the crimes and the status of any agreements between the property owner and other entities. *Ritchie*, No. 03C01-9601-CC-00029 at 11. We did not, however, as Petitioner vigorously maintains throughout his pleadings, conclude that the federal government had exclusive territorial jurisdiction over Petitioner’s crimes. The determination of jurisdiction in this instance was, and still remains, dependent upon further factual determinations beyond the authority of this court. This Court’s jurisdiction is appellate only. *See generally* Tenn. Code Ann. § 16-5-108; *State v. Workman*, 22 S.W.3d 807, 808 (Tenn. 2000). We do not possess the authority to conduct hearings and determine disputed issues of fact. *See Duncan v. Duncan*, 672 S.W.2d 765, 767 (Tenn. 1984). Instead, factual issues raised by the evidence are resolved by the trier of fact and not this Court. *State v. Bland*, 958 S.W.2d 651, 659 (Tenn. 1997), *cert. denied*, 523 U.S. 1083, 118 S. Ct. 1536 (1997). Although Petitioner believes that the various deeds and grants filed with his motions leave no doubt as to the resolution of his jurisdictional issue, the State has not had an opportunity to respond to Petitioner’s allegations, nor has a trial court made any factual determinations as to jurisdiction in light of the State’s response.

Upon the State’s appeal of our decision in *Ritchie*, the [s]upreme [c]ourt held that a petition for writ of habeas corpus is not the proper avenue for raising challenges to a conviction that depend on the introduction of extrinsic evidence. *Ritchie*, 20 S.W.3d at 634. Following a discussion of the history of habeas corpus relief, the court reiterated that “the reach of the writ of habeas corpus in

Tennessee is severely restricted.” *Id.* at 631. “[A] petitioner is not entitled to habeas corpus relief unless that petitioner can show from the record or the face of the judgment that the court of conviction lacked jurisdiction.” *Id.* In a case such as Petitioner’s where it is necessary “to introduce proof beyond the record to establish the invalidity of his conviction, then that conviction by definition is merely voidable, and a Tennessee court cannot issue the writ of habeas corpus under such circumstances.” *Id.* at 633. Accordingly, the [s]upreme [c]ourt reversed the judgment of this Court and dismissed Petitioner’s petition for a writ of habeas corpus.

Thereafter, Petitioner filed his *pro se* motions which are the subject of this appeal. In response to this Court’s concerns over the status of the property’s ownership at the time the offenses were committed, Petitioner also included with his pleadings a grant of easement dated July 25, 1991, from the United States, acting through the Tennessee Valley Authority, to Hamilton County relative to tract number XTCCR-176RE for the purpose of building and operating a recreational facility. Petitioner maintains that the deed conclusively documents the chain of ownership of the property in question and supports his contention that the federal courts had exclusive jurisdiction over the offenses. The trial court, however, denied all of Petitioner’s motions without an evidentiary hearing.

Barry Winfred Ritchie v. State, No. E2002-02609-CCA-R3-PC, slip op. at 2-8 (Tenn. Crim App. Aug. 18, 2003), *perm. app. denied* (Tenn. 2003).

The petitioner filed the habeas corpus petition now under review on May 21, 2007, alleging that his judgments are void because the judge did not sign them, that his life sentence was void because the language of the aggravated rape statute was unconstitutionally vague, and that his indictment was constructively amended by the jury instructions¹.

On July 3, 2007, the Johnson County Criminal Court entered an order of summary dismissal of the petition. On July 17, 2007, the petitioner appealed the order, alleging that the court abused its discretion in dismissing his claims.

“The determination of whether habeas corpus relief should be granted is a question of law.” *Faulkner v. State*, 226 S.W.3d 358, 361 (Tenn. 2007) (citing *Hart v. State*, 21 S.W.3d 901, 903 (Tenn. 2000)). Our review of the habeas corpus court’s decision is, therefore, “de novo with no

¹The petitioner’s claim that his indictment was constructively amended by the jury instructions is not presented for review on appeal.

presumption of correctness afforded to the [habeas corpus] court.” *Id.* (citing *Killingsworth v. Ted Russell Ford, Inc.*, 205 S.W.3d 406, 408 (Tenn. 2006)).

The writ of habeas corpus is constitutionally guaranteed, *see* U.S. Const. art. 1, § 9, cl. 2; Tenn. Const. art. I, § 15, but has been regulated by statute for more than a century, *see Ussery v. Avery*, 222 Tenn. 50, 432 S.W.2d 656, 657 (Tenn. 1968). Tennessee Code Annotated section 29-21-101 provides that “[a]ny person imprisoned or restrained of liberty, under any pretense whatsoever, except in cases specified in § 29-21-102, may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment and restraint.” T.C.A. § 29-21-101 (2000). Despite the broad wording of the statute, a writ of habeas corpus may be granted only when the petitioner has established a lack of jurisdiction for the order of confinement or that he is otherwise entitled to immediate release because of the expiration of his sentence. *See Ussery*, 432 S.W.2d at 658; *State v. Galloway*, 45 Tenn. (5 Cold.) 326 (1868). The purpose of the state habeas corpus petition is to contest a void, not merely a voidable, judgment. *State ex rel. Newsom v. Henderson*, 221 Tenn. 24, 424 S.W.2d 186, 189 (Tenn. 1968). A void conviction is one which strikes at the jurisdictional integrity of the trial court. *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993); *see State ex rel. Anglin v. Mitchell*, 575 S.W.2d 284, 287 (Tenn. 1979); *Passarella v. State*, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994). Because in the petitioner’s case the sentence has not expired and the trial court apparently had jurisdiction over the *actus reus*, the subject matter, and the person of the petitioner, the petitioner’s issues are limited to the claims that the court was without authority to enter the judgments. *See Anglin*, 575 S.W.2d at 287 (“‘Jurisdiction’ in the sense here used, is not limited to jurisdiction of the person or of the subject matter but also includes lawful authority of the court to render the particular order or judgment whereby the petitioner has been imprisoned.”); *see also Archer*, 851 S.W.2d at 164; *Passarella*, 891 S.W.2d at 627.

The petitioner’s first claim, that his judgments are void because the trial judge did not sign them, would not entitle the petitioner to habeas corpus relief. The lack of a judge’s signature on a judgment from a court of record does not render a judgment void. *See generally Michael Thomason v. Kevin Myers*, No. M2002-01346-CCA-R3-CO, slip op. at 2 (Tenn. Crim. App., Nashville, Dec. 20, 2002).

The petitioner is also not entitled to relief on his claim that his life sentence was void because the language of the aggravated rape statute was unconstitutionally vague. He would only be entitled to relief if the sentencing scheme had been declared unconstitutional at the time of conviction or had he successfully challenged the constitutionality of the statute in a petition for post-conviction relief. *See Montro Taylor and Robert Irwin Gwin v. State*, 995 S.W. 2d 78, 83 (Tenn. 1999). In other words, the claim implicates merely a voidable judgment, not a void one. *Id.* at 83-86.

Neither of the petitioner’s claims, even if true, render his convictions for aggravated rape and armed robbery void. Accordingly, the trial court did not err by dismissing the petition without a hearing.

JAMES CURWOOD WITT JR., JUDGE